

AG Contract No. KR95 1429TRN
ADOT ECS File No. JPA 95-106
Project No.: STP-FTH-0(2)P
TRACS No.: SS341 01C
Project: Fountain Hills Blvd.
@ Ashbrook Wash

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
THE TOWN OF FOUNTAIN HILLS

THIS AGREEMENT is entered into 8 September, 1995,
pursuant to Arizona Revised Statutes, Sections 11-951 through
11-954, as amended, between the STATE OF ARIZONA, acting by and
through its DEPARTMENT OF TRANSPORTATION (the "State") and the
TOWN OF FOUNTAIN HILLS, acting by and through its MAYOR and
TOWN COUNCIL (the "Town").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes
Section 28-108 and 28-112 to enter into this agreement and has
by resolution, a copy of which is attached hereto and made a
part hereof, resolved to enter into this agreement and has
delegated to the undersigned the authority to execute this
agreement on behalf of the State.

2. The Town is empowered by Arizona Revised Statutes
Section 48-572 to enter into this agreement and has by
resolution, a copy of which is attached hereto and made a part
hereof, resolved to enter into this agreement and has
authorized the undersigned to execute this agreement on behalf
of the Town.

3. Congress has authorized appropriations for, but not
limited to, the construction of streets and primary, feeder and
farm-to-market roads; the replacement of bridges; the
elimination of roadside obstacles; and the application of
pavement markings.

4. Such project within the boundary of the Town has been
selected by the Town; the field survey of the project has been
completed; and the plans, estimates and specifications have
been prepared and, as required, submitted to the Federal
Highway Administration (FHWA) for its approval.

NO. <u>20089</u>
FILED WITH SECRETARY OF STATE
Date Filed <u>09/08/95</u>
<u>James A. Hall</u> Secretary of State
By <u>Vicky J. Greenwood</u>

5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the Town by reason of federal law and regulations under which funds for the project are authorized to be expended.

6. The Town, in order to obtain federal funds for the construction of the project, is willing to provide Town funds to match federal funds in the ratio required or as finally fixed and determined by the Town and FHWA.

7. The work embraced in this agreement and the estimated costs are as follows: Construct box culvert and roadway approaches.

Estimated Project Cost (incl. 15% CE costs)	\$ 437,681.00
Federal Aid Funds (CAP)	\$ 360,000.00
Town Funds	\$ 77,681.00
Five Percent Surcharge	\$ 19,030.00
Total Town Funds	\$ 96,711.00*

* - This includes a five percent surcharge per Local Government Engineer Memo of 4 April 1994.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State, as authorized agent for the Town, with the aid and consent of the Town and the FHWA will proceed to advertise for, receive and open bids, and subject to the concurrence of the Town and the FHWA, enter into a contract with a firm to whom the award is made for the construction of the project; such project to be performed, completed, accepted and paid for in accordance with the instructions and requirements of the Town and the Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation. The State will enter into a Project Agreement with FHWA covering the work embraced in said construction contract and will request the maximum federal funds available.

b. Should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, upon the concurrence of the Town of the requirement for such increase, the Town shall be obligated to incur such expenditure in excess.

2. Prior to the solicitation of bids, the Town shall deposit funds in the amount determined to be necessary to match federal funds in the ratio required.

3. The Town shall acquire, without cost to the State, the necessary right-of-way and hereby certifies that all necessary rights-of-way have been acquired.

4. The Town shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been removed therefrom, prior to the start of construction.

5. The Town shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the Town shall take all necessary steps to remove or prevent any such encroachment or use; failing in which the State shall have the right to proceed with the removal or prevention thereof, the cost of such removal or prevention to be borne by the Town.

6. Upon completion of construction, the Town shall provide for, at its own cost and as an annual item in its budget, proper maintenance, including, but not limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

7. The Town shall mark and sign school crossings and railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

8. By such regulation as it may by ordinance provide, the Town shall regulate parking and not permit vehicles to be left on the street in any manner other than at and parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic at intersections and at such other locations as necessary.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. The Town assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the Town and that the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation or attorneys' fees.

2. The cost of the design, construction and construction engineering work covered by this agreement is to be borne by FHWA and Town, each in the proportion prescribed or as fixed and determined by the State, the Town and the FHWA as stipulated in this agreement. Therefore, Town agrees to furnish and provide the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work; provided, however, that any provisions in this agreement for maintenance shall be perpetual, unless assumed by another governmental entity.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Department of Transportation
Joint Project Administration
205 S. 17th Avenue - 616E
Phoenix, AZ 85007

Town of Fountain Hills
Town Manager
Box 17958
Fountain Hills, AZ 85269

9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

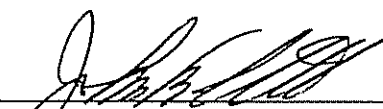
IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

TOWN OF FOUNTAIN HILLS

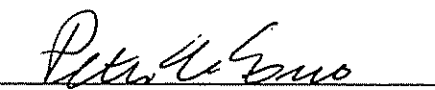
STATE OF ARIZONA

Department of Transportation

By



JOHN M. CUTILLO
Mayor

By


PETER L. ENO
Contract Administrator

ATTEST:


By


CASSIE HANSEN
Town Clerk

RESOLUTION

BE IT RESOLVED on this 29th day of June 1995, that I, the undersigned LARRY S. BONINE, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with the Town of Fountain Hills for the purpose of defining responsibilities for construction of a box culvert and approaches on Fountain Hills Blvd. in the Town.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Contract Administrator for approval and execution.



for LARRY S. BONINE
Director

APPROVAL OF THE FOUNTAIN HILLS TOWN ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION and the TOWN OF FOUNTAIN HILLS and declare this agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona.

DATED this 18 day of August, 1995.

William E. Lamm

Town Attorney

TOWN OF FOUNTAIN HILLS

COUNTY OF MARICOPA

STATE OF ARIZONA

OFFICE OF THE CLERK

State of Arizona)
County of Maricopa)ss.
Town of Fountain Hills)

I, Cassie B. Hansen, Town Clerk of the Town of Fountain Hills, do hereby certify that the attached document is a true and correct copy of the Fountain Hills Town Council minutes of August 3, 1995, at which two Intergovernmental Agreements with the Arizona Department of Transportation, JPA 95-105 and JPA 95-106, were unanimously approved by the Town Council.

IN WITNESS WHEREOF, I have
hereunto set my hand and affixed
the Official Seal of the Town of
Fountain Hills. Done at the
Town Hall of Fountain Hills this
21st day of August, 1995.

Cassie B Hansen

Cassie B. Hansen, Town Clerk

**TOWN OF FOUNTAIN HILLS
MINUTES OF THE REGULAR SESSION OF THE
FOUNTAIN HILLS TOWN COUNCIL
AUGUST 3, 1995**

A public meeting of the Fountain Hills Town Council was convened and called to order by Mayor Cutillo at 6:30 P.M., Thursday, August 3, 1995, in the Fountain Hills Town Hall Council Chambers, located at 16836 E. Palisades Blvd., Building C, Fountain Hills, Arizona.

ROLL CALL - Following the pledge to the flag and the invocation by Councilman Lawrence, roll call was taken. Present for roll call were the following members of the Fountain Hills Town Council: Mayor John Cutillo, Vice Mayor Frank Clark, and Councilmembers Don Lawrence, Wally Hudson, Bill O'Brien and Marianne Wiggishoff. Councilwoman Peg Tibbetts was absent. Also present were Town Manager Paul Nordin, Town Attorney Bill Farrell, Director of Community Development Gary Jeppson, Town Engineer Randy Harrel and Planners Geir Sverdrup and Jeff Valder.

Mayor Cutillo said he had received requests to remove Agenda Items #7, #17 and #18 from the Consent Agenda for further discussion. He then read the remainder of the Consent Agenda which contained the following agenda items:

AGENDA ITEM #2 - CONSIDERATION OF APPROVING THE COUNCIL MEETING MINUTES OF JUNE 29TH AND JULY 5TH, 1995.

AGENDA ITEM #3 - CONSIDERATION OF THE INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF SCOTTSDALE FOR USE OF THEIR JAIL FACILITIES FOR PRISONER HOUSING.

AGENDA ITEM #4 - CONSIDERATION OF THE INTERGOVERNMENTAL AGREEMENT WITH THE MARICOPA COUNTY LIBRARY DISTRICT FOR FULL LIBRARY SERVICES FOR THE TOWN OF FOUNTAIN HILLS.

AGENDA ITEM #5 - CONSIDERATION OF THE INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR SAGUARO BOULEVARD BIKE LANES. ADOT FEDERAL AID FUNDS ARE \$72,000, WITH THE TOWN FUNDS OF \$7,672.

AGENDA ITEM #6 - CONSIDERATION OF THE INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR A BOX CULVERT ON FOUNTAIN HILLS BOULEVARD AT ASHBROOK WASH. ADOT FEDERAL AID FUNDS ARE \$360,000, WITH TOWN FUNDS OF \$96,711.

AGENDA ITEM #8 - CONSIDERATION OF RESOLUTION 1995-36, ABANDONING TO THE ADJACENT PROPERTY OWNERS ALL RIGHT, TITLE OR INTEREST THE TOWN HAS IN THOSE CERTAIN PUBLIC RIGHTS-OF-WAY LOCATED WITHIN FOUNTAIN HILLS FINAL PLAT NUMBER 302, BLOCK 5 AS RECORDED IN BOOK 156, PAGE 45 OF THE RECORDS OF THE MARICOPA COUNTY RECORDER WHICH HAVE BEEN FOUND TO BE NO LONGER NECESSARY FOR PUBLIC USE.

AGENDA ITEM #9 - CONSIDERATION OF RESOLUTION 1995-37, ABANDONING TO THE ADJACENT PROPERTY OWNERS ALL RIGHT, TITLE OR INTEREST THE TOWN HAS IN THOSE CERTAIN PUBLIC RIGHTS-OF-WAY LOCATED WITHIN FOUNTAIN HILLS FINAL PLAT NUMBER 302A, BLOCK 2 AS RECORDED IN BOOK 164, PAGE 43 OF THE RECORDS OF THE MARICOPA COUNTY

RECORDER WHICH HAVE BEEN FOUND TO BE NO LONGER NECESSARY FOR PUBLIC USE.

AGENDA ITEM #10 - CONSIDERATION OF RESOLUTION 1995-47, ABANDONING WHATEVER RIGHT, TITLE, OR INTEREST THE TOWN HAS IN THE CERTAIN DRAINAGE AND PUBLIC UTILITY EASEMENTS ALONG THE WESTERLY LOT LINE OF LOT 9, BLOCK 4, OF PLAT 506A FOUNTAIN HILLS, ARIZONA, AS RECORDED IN BOOK 159, PAGE 30, OF THE RECORDS OF MARICOPA COUNTY, ARIZONA.

AGENDA ITEM #11 - CONSIDERATION OF RESOLUTION 1995-48, ABANDONING WHATEVER RIGHT, TITLE, OR INTEREST THE TOWN HAS IN THE CERTAIN DRAINAGE AND PUBLIC UTILITY EASEMENTS ALONG THE WESTERLY LOT LINE OF LOT 7, BLOCK 12, OF PLAT 204 FOUNTAIN HILLS, ARIZONA, AS RECORDED IN BOOK 142 OF MAPS, PAGE 10, RECORDS OF MARICOPA COUNTY, ARIZONA.

AGENDA ITEM #12 - CONSIDERATION OF RESOLUTION 1995-49, ABANDONING WHATEVER RIGHT, TITLE, OR INTEREST THE TOWN HAS IN THE CERTAIN DRAINAGE AND PUBLIC UTILITY EASEMENTS ALONG THE WESTERLY LOT LINE OF LOT 40, BLOCK 3, OF PLAT 505C FOUNTAIN HILLS, ARIZONA, AS RECORDED IN BOOK 158 OF MAPS, PAGE 42, RECORDS OF MARICOPA COUNTY, ARIZONA.

AGENDA ITEM #13 - CONSIDERATION OF RESOLUTION 1995-52, ABANDONING WHATEVER RIGHT, TITLE, OR INTEREST THE TOWN HAS IN A PORTION OF THE CERTAIN DRAINAGE AND PUBLIC UTILITY EASEMENTS ALONG THE SOUTHWESTERLY AND SOUTHEASTERLY LOT LINES OF LOT 3, BLOCK 7, OF PLAT 206 FOUNTAIN HILLS, ARIZONA, AS RECORDED IN BOOK 147 OF MAPS, PAGE 2, RECORDS OF MARICOPA COUNTY, ARIZONA.

AGENDA ITEM #14 - CONSIDERATION OF A FINAL PLAT FOR LOT 18, BLOCK 2, FOUNTAIN HILLS FINAL PLAT 106 FOR MIRAGE CONDOMINIUMS #108 LOCATED AT 16818 E. ALAMOSA AVENUE, CASE NUMBER S95-068.

AGENDA ITEM #15 - CONSIDERATION OF A REPLAT OF LOTS 5, 17, 40, 41 AND 52, AND TRACTS "A" AND "E" OF FOUNTAIN HILLS FINAL PLAT SUNRISE POINT TO RECONFIGURE THE AFOREMENTIONED LOTS AND TRACT TO ACCOMMODATE AN ENLARGED DRAINAGE EASEMENT ON TRACT "A" AND REDUCING THE SIZE OF TRACT "E", CASE NUMBER S95-064.

AGENDA ITEM #16 - CONSIDERATION OF THE FINAL PLAT FOR EAGLE MOUNTAIN #6; A 67 LOT SUBDIVISION IN THE EAGLE MOUNTAIN DEVELOPMENT LOCATED SOUTH OF MIRAMONTE DRIVE, EAST AND NORTH OF SUMMER HILLS BOULEVARD, #S94-116.

Vice Mayor Clark MOVED to approve the Consent Agenda as read. Councilwoman Wiggishoff SECONDED the motion. A roll call vote was taken with the following results:

Councilman Lawrence	Aye
Councilman O'Brien	Aye
Councilwoman Wiggishoff	Aye
Councilman Hudson	Aye
Vice Mayor Clark	Aye
Mayor Cutillo	Aye

The motion CARRIED unanimously.



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007-2926

GRANT WOODS
ATTORNEY GENERAL

MAIN PHONE : 542-5025
TELECOPIER : 542-4085

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A. G. Contract No. KR95-1429-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. §11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 29th day of August, 1995.

GRANT WOODS
Attorney General

A handwritten signature in cursive script, reading "James R. Redpath", is written over a horizontal line.

JAMES R. REDPATH
Assistant Attorney General
Transportation Section

JRR:lsr
8918G/86